

EXHIBIT "D"

DECLARATION OF HORACE SUTTERER

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRANDON WELLS, HORACE	\$	
SUTTERER, KIRK WILLIAMS,	\$	
ET AL.,	\$	
	\$	
Plaintiffs,	\$	
	\$	
v.	\$	CIVIL ACTION NO. 4:10-cv-2373
	\$	(JURY)
TAXMASTERS, INC., TMIRS	\$	
ENTERPRISES, LTD., TM GP	\$	
SERVICES, LLC D/B/A	\$	
TAXMASTERS, PATRICK	\$	COLLECTIVE ACTION
R. COX AND ALEX CLAMON,	\$	
INDIVIDUALLY,	\$	
	\$	
Defendants.	\$	

DECLARATION OF HORACE SUTTERER

"My name is Horace Sutterer. I am over the age of eighteen (18), fully competent and capable to make this Declaration. All of the facts contained within this Declaration are true and correct and are based upon my personal knowledge.

I was employed by TaxMasters, Inc., TMIRS Enterprises, LTD, TM GP Services, LLC D/B/A Taxmasters (collectively "Taxmasters") beginning in 2007 through 2009 as a tax consultant. When I was hired by Tax Masters, there were four (4) sales teams. Each sales team consists of eight (8) tax consultants, one sales assistant and a team leader. When I left Tax Masters, there were twelve (12) sales teams. There is no distinction between the teams' job duties or customers. Newly hired tax consultants are randomly assigned to teams on an as needed basis. The twelve (12) team leaders report to one of two group team leaders. The group team leaders are Ralph Gardner and Jeff Welch and they report to Alex Clamon, the Vice-President of Sales.

All of the tax consultants work in one large room. We are responsible for selling the Tax Masters' services listed on a one page services sheet primarily through customer phone calls that are received on a rotating basis. We also call and email prospective clients identified in the Tax Masters' database. All tax

consultants, including me, are expected to sell a minimum of fifteen thousand dollars (\$15,000.00) of services each week. Although, each tax consultant is assigned a personal sales quota each week by their team leader which may be higher than the \$15,000.00 minimum.

Sales activities are monitored on a daily and weekly basis by team leaders, group team leaders, Clamon and Cox. I received numerous emails from my team leader about my sales productivity and/or the teams' sales productivity that originated from Cox, Clamon or the group team leader. I was also told that Clamon expected each tax consultant to make fifty (50) to sixty (60) outbound sales calls to prospective clients each day. In other words, I knew that my sales activity was closely watched by every level of management.

Any team or individual that fails to meet their sales quota is required to continue working until the quota is reached. Attachment "1" is a true and correct copy of a typical email that we would receive directing that all team members must stay at work until a specific dollar amount of sales was reached. It was common for the team members to work fifty (50) to sixty (60) hours a week.

All tax consultants were paid a base wage or commission, whichever is higher. According to the Tax Master's Sales Representative Compensation Plan, tax consultants are paid straight commissions. However, if for some reason commissions are not earned during a particular workweek, tax consultants are then paid an hourly rate of pay as well as some overtime compensation. However, the tax consultants, including me, did not receive overtime compensation for overtime hours worked when commissions were paid.

Attachment "2" is a true and correct copy of my paychecks covering workweeks where commissions were not earned. I was paid an hourly rate of pay.

Attachment "3" is a true and correct copy of my paychecks covering workweeks where commissions were paid. Although the paychecks reflect that I worked overtime hours during these workweeks, I did not receive any overtime compensation for these overtime hours worked.

I declare under penalty of perjury that the foregoing is true and correct."

Date: 10/28/10

Horace Sutterer
Horace Sutterer

EXHIBIT "D-1"

From: Horace&Carol Sutterer
To: Melissa Bannatyne
Subject: FW: Ralph's Message
Date: Thursday, June 24, 2010 8:48:08 PM

Subject: FW: Ralph's Message
Date: Wed, 26 May 2010 16:37:50 -0500
From: horace.sutterer@txmstr.com
To: h_c_sutterer@hotmail.com

From: Darren Bean
Sent: Wednesday, May 26, 2010 4:33 PM
To: Carlisle Mitchell; Horace Sutterer; Jennifer Brandsma; Jennifer Jones; Kenon Williams; LaTonya Julian; Marc Twyman; Nicki Sample; Shannon Taylor
Subject: Ralph's Message

Team Leaders,

We are currently at: \$246,452 @ 2pm on May 26, 2010.
We yesterday at: \$208,002 which means we have sold
\$ 38,450 but our goal today is \$167,000 so we would be on track to
sell 750,000 for the week.
We need another \$128,550 to catch us up.
That means each team needs \$ 21,425 more today to hit this mark.....That's 5 files per
team...that also means your teams may be working late tonight to get us back on track.

WE MUST ACHIEVE 28K TODAY OR THE ABOVE APPLIES. I'M SURE EVERYONE WILL STAY
TONIGHT T GET THEIR NUMBERS. PLEASE MAKE WHATEVER ARRNGEMENTS NECESSARY
TO STAY LATER. WE CAN EXPECT TO WORK HARDER AND LATER UNTIL WE ACHIEVE OUR
OBJECTIVES.

Thanks

Darren Bean

Tax Consultant Manager

TaxMasters

900 Town & Country Lane, Ste. 400
Houston, TX 77024
(888) 497-5937 ext. 3501
(281) 497-5937 ext. 3501
(713) 463-2927 FAX
Darren.Bean@txmstr.com

EXHIBIT "D-2"

PERSONAL AND CHECK INFORMATION

HORACE SUTTERER
21407 BIRCH BAY
KATY, TX 77449

Soc Sec #: XXX-XX-XXXX Employee ID: 141
Hire Date: 11/26/07
Status: FT
Filing Status:
Federal: Single, 1
State: TX, Single, 1
Dept: 914

Pay Period: 01/04/10 to 01/17/10

Check Date: 01/22/10 Check #: Direct Deposit

TIME OFF (Based On Policy Year)

DESCRIPTION	AVAILABLE	USED	DAYS
VACATION S	1.000	0.000	

NET PAY ALLOCATIONS

DESCRIPTION	CURRENT (\$)	YTD (\$)
CHECKING 1 - 1323	1983.20	3472.38
Net Pay	1983.20	3472.38

EARNINGS

DESCRIPTION	HOURS	RATE	CURRENT (\$)	YTD HOURS	YTD (\$)
REGULAR EARNING	80.00			158.53	
OVERTIME	44.04			51.27	
COMMISSION			2714.88		4487.53
HOLIDAY				24.00	216.00
ORPHAN			104.92		202.58
PAI MED 125 (T			-178.73		-357.46
PAI DEN125 (TX)			-13.56		-27.12
PAI VISION (TX)			-5.20		-10.40
GROSS	124.04		2622.31	233.80	4511.13
TRUE GROSS			2819.80		4906.11

WITHHOLDINGS

DESCRIPTION	CURRENT (\$)	YTD (\$)
FEDERAL WH	438.51	693.65
OASDI	162.58	279.69
MEDICARE	38.02	65.41
TOTAL	639.11	1038.75

NET PAY

	CURRENT (\$)	YTD (\$)
NET PAY	1983.20	3472.38

Payrolls by Paychex, Inc.

1470-8857 TAX MASTERS - 900 TOWN & COUNTRY LN STE 400 - HOUSTON, TX 77024 -

PERSONAL AND CHECK INFORMATION

HORACE SUTTERER
21407 BIRCH BAY
KATY, TX 77449

Soc Sec #: XXX-XX-XXXX Employee ID: 141

Hire Date: 11/26/07

Status: FT

Filing Status:

Federal: Single, 1

State: TX, Single, 1

Dept: 914

Pay Period: 01/18/10 to 01/31/10

Check Date: 02/05/10 Check #: Direct Deposit

TIME OFF (Based On Policy Year)

DESCRIPTION	AVAILABLE	USED
VACATION S	1.830	0.000 DAYS

NET PAY ALLOCATIONS

DESCRIPTION	CURRENT (\$)	YTD (\$)
CHECKING 1 - 1323	838.73	4311.11
Net Pay	838.73	4311.11

EARNINGS

DESCRIPTION	HOURS	RATE	CURRENT (\$)	YTD HOURS	YTD (\$)
REGULAR EARNING	80.00			238.53	
OVERTIME	38.12			89.39	
COMMISSION			1172.50		5660.03
HOLIDAY				24.00	216.00
ORPHAN			26.10		228.68
PAI MED 125 (T			-178.73		-536.19
PAI DEN125 (TX)			-13.56		-40.68
PAI VISION (TX)			-5.20		-15.60
GROSS	118.12		1001.11	351.92	5512.24
TRUE GROSS			1198.60		6104.71

WITHHOLDINGS

DESCRIPTION	CURRENT (\$)	YTD (\$)
FEDERAL WH	85.79	779.44
OASDI	62.07	341.76
MEDICARE	14.52	79.93
TOTAL	162.38	1201.13

NET PAY

	CURRENT (\$)	YTD (\$)
NET PAY	838.73	4311.11

Payrolls by Paychex, Inc.

1478-8857 TAX MASTERS - 900 TOWN & COUNTRY LN STE 400 - HOUSTON, TX 77024 -

EXHIBIT "D-3"

PERSONAL AND CHECK INFORMATION

HORACE SUTTERER
21407 BIRCH BAY
KATY, TX 77449

Soc Sec #: XXX-XX-XXXX Employee ID: 141

Hire Date: 11/26/07

Status: FT

Filing Status:

Federal: Single, 1

State: TX, Single, 1

Dept: 914

Pay Period: 02/15/10 to 02/28/10

Check Date: 03/05/10 Check #: Direct Deposit

TIME OFF (Based On Policy Year)

DESCRIPTION	AVAILABLE	USED	
VACATION S	2.860	0.000	DAYS

NET PAY ALLOCATIONS

DESCRIPTION	CURRENT (\$)	YTD (\$)
CHECKING 1 - 1323	1380.94	7540.92
Net Pay	1380.94	7540.92

EARNINGS

DESCRIPTION	HOURS	RATE	CURRENT (\$)	YTD HOURS	YTD (\$)
REGULAR EARNING	80.00	13.3300	1066.40	398.53	1066.40
OVERTIME	42.97	19.9950	859.19	170.75	859.19
COMMISSION					7729.63
HOLIDAY				24.00	216.00
ORPHAN					353.78
PAI MED 125 (T			-178.73		-893.65
PAI DEN125 (TX)			-13.56		-67.80
PRODUCTION BONU					310.44
PAI VISION (TX)			-5.20		-26.00
GROSS	122.97		1728.10	593.28	9547.99
TRUE GROSS			1925.59		10535.44

WITHHOLDINGS

DESCRIPTION	CURRENT (\$)	YTD (\$)
FEDERAL W/H	214.96	1276.64
OASDI	107.14	591.98
MEDICARE	25.06	138.45
TOTAL	347.16	2007.07

NET PAY

	CURRENT (\$)	YTD (\$)
NET PAY	1380.94	7540.92

Payrolls by Paychex, Inc.

9476-8357 TAX MASTERS - 900 TOWN & COUNTRY LN STE 400 - HOUSTON, TX 77024 -

PERSONAL AND CHECK INFORMATION

HORACE SUTTERER
21407 BIRCH BAY
KATY, TX 77449

Soc Sec #: XXX-XX-XXXX Employee ID: 141

Hire Date: 11/26/07

Status: FT

Filing Status:

Federal: Single, 1

State: TX, Single, 1

Dept: 914

Pay Period: 03/01/10 to 03/14/10

Check Date: 03/19/10 Check #: Direct Deposit

TIME OFF (Based On Policy Year)

DESCRIPTION	AVAILABLE	USED	DAYS
VACATION S	2.660	0.000	

NET PAY ALLOCATIONS

DESCRIPTION	CURRENT (\$)	YTD (\$)
CHECKING 1 - 1323	1266.95	9074.59
Net Pay	1266.95	9074.59

EARNINGS

DESCRIPTION	HOURS	RATE	CURRENT (\$)	YTD HOURS	YTD (\$)
REGULAR EARNING	80.00	13.8300	1106.40	478.53	2172.80
OVERTIME	31.33	20.7450	649.94	202.08	1509.13
COMMISSION					7729.53
HOLIDAY				24.00	216.00
ORPHAN					353.78
HALF-TIME RATE					42.96
PAI MED 125 (T			-178.73		-1072.38
PAI DEN125 (TX)			-13.56		-81.36
PRODUCTION BONU					556.30
PAI VISION (TX)			-5.20		-31.20
GROSS	111.33		1558.85	704.61	11395.66
TRUE GROSS			1756.34		12580.60

WITHHOLDINGS

DESCRIPTION	CURRENT (\$)	YTD (\$)
FEDERAL W/H	172.65	1449.29
QASDI	96.65	706.54
MEDICARE	22.60	165.24
TOTAL	291.90	2321.07

NET PAY

CURRENT (\$)

YTD (\$)

1266.95

9074.59

Payrolls by Paychex, Inc.

0478-8857 TAX MASTERS - 900 TOWN & COUNTRY LN STE 400 - HOUSTON, TX 77024 -